

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) DISMISSAL AND
5 MUR 7329) CASE CLOSURE UNDER THE
6 VIGOP (Virgin Islands Republican Party)) ENFORCEMENT PRIORITY
7 and Scott B. Mackenzie, as treasurer) SYSTEM
8)
9

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
12 basis to allocate its resources and decide which matters to pursue. These criteria include, without
13 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
14 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
15 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
16 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
17 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
18 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
19 discretion to dismiss cases under certain circumstances and where appropriate, to find no reason to
20 believe that a violation occurred.

21 The Office of General Counsel has scored MUR 7329 as a low-rated matter and has
22 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
23 reasons set forth below, we recommend that the Commission dismiss the allegations that VIGOP
24 (Virgin Island Republican Party) and Scott B. Mackenzie, in his official capacity as treasurer (the
25 "Committee"),² violated the Act or Commission regulations.

¹ The EPS rating information is as follows: : Complaint Filed: February 23, 2018. Response Filed: March 16, 2018.

² For purposes of this Report, the term "Committee" refers to VIGOP's federal reporting account, while the state account is referred to as the "Territorial Committee."

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1 The Complaint notes that on March 30, 2017, Secretary of the U.S. Department of the Interior
2 Ryan Zinke appeared at a fundraiser hosted by the Committee.³ The Complaint alleges that although
3 the Committee disclosed disbursements for expenses related to the event, its reports have not
4 disclosed any related contributions.⁴

5 Respondents assert that the fundraiser did not violate the Act or Commission regulations
6 because it was a nonfederal event for the benefit of the Territorial Committee, the contributions were
7 deposited into a Territorial Committee bank account, and they were disclosed to the Virgin Islands
8 Election System.⁵ Respondents also state that the Committee made disbursements related to the
9 fundraiser in the amount of \$1,982.69, which were in accordance with Commission regulations.⁶

10 Political committees are required to file reports of receipts and disbursements with the
11 Commission, including itemizing contributions to the reporting committee from persons whose
12 contribution or contributions have an aggregate amount or value in excess of \$200 within the

³ Compl. at 1 (Feb. 23, 2018). According to the Complaint, tickets to the event ranged between \$75 for an individual to \$5,000 for a couple, and attendees who contributed a minimum of \$1,500 would receive a picture with Zinke. *Id.* at 2-3.

⁴ *Id.* at 3. The Complaint also alleges that the VIGOP Territorial Committee has not reported any contributions for the March 30, 2017, event to the Virgin Islands Election System, nor has it ever filed any reports with the Virgin Islands Election System. *Id.* at 2, 6. Respondents deny these allegations and assert that they disclosed the contributions to the event as required to the Virgin Islands Election System. Resp. at 1 (Mar. 14, 2018). Available information indicates that VIGOP reported some financial information to the Virgin Islands Election System, including two May 26, 2017, deposits to a bank account that totaled \$10,115.96, but we cannot tell if these deposits relate to the March 30, 2017, fundraiser. The allegations concerning Territorial campaign finance reporting fall outside the Commission's jurisdiction, so we do not address them here. We note that the Complaint is also addressed to the Supervisor of the Virgin Islands Election System and the U.S. Attorney General for the Virgin Islands.

⁵ Resp. at 1-2. Respondents state that the contributions received at the event were deposited to a Territorial bank account, not in the VIGOP's federal bank accounts, therefore the Committee did not report any contributions from the event to the Commission on its disclosure reports. *Id.* at 1.

⁶ See 11 C.F.R. § 106.6(d) (direct fundraising costs may be paid by a combination of federal and nonfederal funds). The Response cites 11 C.F.R. § 106.7(d)(4), which applies to fundraising costs paid by state party committees using a combination of federal and nonfederal funds. Resp. at 2. We note, however, the Commission has not recognized VIGOP as a state party committee. The Complaint does not allege the Committee violated 11 C.F.R. §§ 106.6(d) or 106.7(d)(4).

1 calendar year.⁷ Political committees are also required to report and itemize expenditures in an
2 aggregate amount or value in excess of \$200 within the calendar year made to meet the committee's
3 operating expenses.⁸

4 In light of the Respondents' statements and the lack of contrary information, and in
5 furtherance of the Commission's priorities relative to other matters pending on the Enforcement
6 docket, the Office of General Counsel recommends that the Commission exercise its prosecutorial
7 discretion and dismiss the allegations against VIGOP (Virgin Island Republican Party) and Scott B.
8 Mackenzie, in his official capacity as treasurer, pursuant to *Heckler v. Chaney*, 470 U.S. 821, 831-32
9 (1985). Finally, we recommend that the Commission approve the attached Factual and Legal
10 Analysis, close the file as to all Respondents, and send the appropriate letters.

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⁷ 52 U.S.C. § 30104(a), (b)(2)(A), (b)(3)(A), (b)(4)(A), (b)(5)(A); 11 C.F.R. § 104.3(2)(i)(A), (4)(i).

⁸ 52 U.S.C. § 30104(b)(4)(A), (b)(5)(A); 11 C.F.R. § 104.3(3)(i).

